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BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER
Chairman
WILLIAM A. MUNDELL
Commissioner
MIKE GLEASON
Commissioner
KRISTIN K. MAYES
Commissioner
BARRY WONG
Commissioner

Arizona Corporation Commission

DOCKETED

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IN THE MATTER OF THE APPLICATION
OF LEVEL 3 COMMUNICATIONS, LLC
FOR A LIMITED WAIVER RELATING TO
TRANSFER OF CONTROL AND
FINANCING TRANSACTIONS

DOCKET NO. T-03654A-06-0356

DECISION NO. 68997

ORDER

Open Meeting
October 17 and 18, 2006
Phoenix, Arizona

BY THE COMMISSION:

Introduction

On May 30, 2006, Level 3 Communications, LLC ("Level 3") petitioned the Arizona Corporation Commission ("Commission"), for a limited waiver of the Affiliated Interests Rules (A.A.C. R14-2-801 et seq.), pursuant to Arizona Administrative Code ("A.A.C.") R14-2-806. The Company also requests a partial exemption of A.R.S. § 40-285, and A.R.S. §§ 40-301 to -303 pursuant to A.R.S. § 40-202.M. Level 3 seeks to streamline the administrative process by which Level 3 may complete transfer of control and financing transactions.

On June 29, 2006, the Commission suspended the Application up to and including September 28, 2006.

FINDINGS OF FACTBackground of Applicant

1. Level 3 Communications, LLC is a Delaware limited liability company. Level 3 provides voice and data services to carriers, ISPs, and other business customers over its IP-based

1 network. Level 3 is a wholly-owned subsidiary of Level 3 Financing, Inc., which in turn is a
2 wholly-owned subsidiary of Level 3 Communications, Inc., a publicly traded company
3 (NASDAQ: LVLTL). Level 3 is a non-dominant carrier that is authorized to provide resold and/or
4 facilities-based telecommunications services nationwide pursuant to certification, registration or
5 tariff requirements, or on a deregulated basis. Level 3 is also authorized by the Federal
6 Communications Commission ("FCC") to provide international and domestic interstate services as
7 a non-dominant carrier.

8 2. In Arizona, Level 3 is authorized to provide facilities-based and resold local exchange,
9 toll and access services pursuant to a certificate granted in Decision No. 61737, dated June 4,
10 1999. Level 3 does not have residence customers in Arizona.

11
12 Application

13 3. The Company in its Application represents the following:

- 14 a. In Arizona, a Class A CLEC, such as Level 3, that seeks to undergo a
15 reorganization is typically subject to the Affiliated Interests Rules (A.A.C. R14-
16 2-801 et seq.). In addition, it is required to obtain Commission approval for
17 guarantees of assets and other transactions among affiliates under these same
18 rules. Under A.R.S. § 40-285, public service corporations must obtain
19 Commission approval prior to a sale, lease, assignment mortgage or
20 encumbrance of its assets. Public service corporations are also required to
21 obtain prior Commission approval in order to complete a stock or debt
22 financing. Although the Arizona statutes and the Affiliated Interests Rules
23 provide the general authorization for Commission oversight of these types of
24 transactions, the statutes and Commission regulations also allow the
25 Commission to waive these requirements in certain situations, which is
26 appropriate following the advent of competition. As such, through these waiver
27 provisions, the Commission retains the discretion to determine the
28 administrative process by which it exercises oversight authority over business
transactions.
- 24 b. The public interest in a competitive environment does not require the same
25 degree of scrutiny of non-dominant carriers' business and financial operations
as typically performed with a monopoly provider.
- 26 c. Level 3 seeks this waiver to eliminate approval procedures it believes impose
27 unnecessary and burdensome requirements on non-dominant, competitive
28 carriers.

- 1 d. Non-dominant carriers today are motivated by robust competition for customers
2 and financing to complete corporate acquisition and financing transactions
3 quickly - often in just a few weeks. During the period which a carrier's
4 application is pending, the non-dominant provider is forced to put on hold the
5 completion of consolidations, corporate changes, or financing arrangements.
- 6 e. While parties await approval, they are exposed to economic risks of delay
7 including lost revenue and synergies, customer defections, impaired service, or
8 even the collapse of the transaction. Also, Arizona's statutes and regulations
9 provide that failure to obtain the required approvals may result in the entire
10 transaction being deemed void. (See A.A.C. R14-2-804; A.R.S. §§ 40-285; 40-
11 303.)
- 12 f. Most carriers operating in multiple jurisdictions also hold authority from the
13 FCC under Section 214 of the Communications Act of 1934, as amended, to
14 operate as interstate common carriers. Under federal rules, such interstate
15 carriers are required to obtain prior approval to transfer control. However, the
16 FCC has reformed its processes and rules to eliminate unnecessary delays and
17 burdens on competitive carriers and applies streamlined approval processing
18 procedures to the transfer transactions of a vast majority of non-dominant
19 competitive interstate carriers. Specifically, FCC rules provide that applications
20 for approval subject to streamlined treatment are deemed granted within 31 days
21 of publication of the filing (unless otherwise notified by the Commission). In
22 the event a transaction does not qualify for streamlining (based on, for instance,
23 the dominant position of the carriers in the transaction), the FCC attempts to
24 complete its review of those transactions within six months. The FCC does not
25 impose any regulatory requirements or process on interstate carrier financing
26 transactions.

The Applicant's Request

19 4. Level 3 requests that the Commission grant it a limited waiver that would require
20 that Level 3 do the following in relation to any business transaction that would fall within the
21 requirements of the Affiliated Interests Rules (A.A.C. R14-2-801 et seq.), A.R.S. § 40-285 and/or
22 A.R.S. §§ 40-301 to -303:

- 23 1. At least ten days prior to the transaction, Level 3 must file a notice ("Notice") of the
24 transaction with the Commission.
- 25 2. The Notice must contain certain basic information about the carrier, its operations
and the transaction at issue.
- 26 3. The Notice shall be deemed effective approval of the transaction under the
27 applicable Arizona statutes and regulations upon filing.
- 28 4. The Commission would retain jurisdiction over Level 3 and the transaction post
closing to make inquiries, and, if necessary, to take action to protect consumer

interests, commence proceedings, and/or impose conditions on Level 3's certificate, including necessary reporting requirements.

Staff's Analysis and Recommendations

5. The Applicant seeks a general waiver without stating that Level 3 has any specific need for such a waiver at any time in the near future. Without knowledge of such information Staff is unable to understand how such a waiver will be of financial or operating benefit to Level 3 or its customers. In addition, the waiver sought by the Applicant would virtually eliminate the Commission's review over most if not all merger and financing applications for non-dominant carriers. This appears to go well beyond the limited waiver or streamlining which the Commission has at times found to be appropriate for non-dominant carriers. See A.A.C. R14-2-1101, et seq. Even Level 3 acknowledges the FCC has not eliminated its reviews of non-dominant carrier transactions; but rather has attempted to streamline its reviews. Staff and the Commission often adjust their process now to accommodate particular closing dates of applicants.¹

6. Although the Applicant points to the Commission's discretion to "determine the administrative process by which it exercises oversight authority over business transactions", Level 3 does not fully appreciate how the Commission already exercises such discretion when applicants request expedited treatment. Staff recalls that many applicants have requested waivers of Rule 803(B), pursuant to Rule 806, depending on the specific needs of proposed transactions. Level 3, itself, was a party to such a waiver request in a recent matter – Docket No. T-03654A-05-0797, Decision No. 68346, December 12, 2005. The Commission has entertained waiver requests when appropriate given the circumstances and will continue to do so.²

7. Level 3 states that delays of "a few months put at risk the successful closing of transfer and financing transactions." Staff is aware that participants in transfer and financing transactions face many risks. Nonetheless, the risks to business participants must be balanced with public interests. That parties seldom intervene, as noted by Level 3, may well be a positive indicator of the current processes operating as intended.

¹ Electric Lightwave, LLC, Integra Telecom Holdings, Inc., T-03054A-06-0154, Decision No. 68798.

² WilTel Communications, LLC, WilTel Local Network, LLC, Level 3 Communications, LLC, T-03708A-05-0797, T-03779A-05-0797, T-03654A-05-0797, Decision No. 68346.

8. The transactions described by Level 3 in its application require that all parties know their needs well in advance and, therefore, have the responsibility and discretion to plan accordingly and file applications before the Commission at their discretion.

9. Further, in processing applications, Staff has found that the delays experienced are just as often due to the Applicant's (1) failure to communicate clearly with Staff on the specifics of the matter, (2) failure by the Applicant to include all the necessary and required requests for approvals and related information in its initial application, (3) failure to timely respond to Staff data requests, and (4) failure of the Applicant to put any timing requirements in the initial application which would give Staff and the Hearing Division sufficient notice of its timing constraints.

10. Level 3 also indicated that the Commission seldom, if never, denies transfer and financing transactions. Staff would note that few, if any, Commission orders fail to impose compliance conditions which could only have arisen by through the analysis and open discussions afforded by the processes that Level 3 seeks to waive.

11. For the reasons stated above, Staff recommends that Level 3's application be denied.

CONCLUSIONS OF LAW

1. Level 3 is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over Level 3 and of the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated September 6, 2006, concludes that it is in the public interest to deny the application of Level 3 for a limited waiver, pursuant to A.A.C. R14-2-806 and A.R.S. 8 40-202.M., of the provisions of the Affiliated Interests Rules (A.A.C. R14-2-801 et seq.), A.R.S. § 40-285, and A.R.S. §§ 40- 301 to - 303, to streamline the administrative process by which Level 3 may complete transfer of control and financing transactions.

ORDER

IT IS THEREFORE ORDERED that the application of Level 3 for a limited waiver, pursuant to A.A.C. R14-2-806 and A.R.S. 8 40-202.M., of the provisions of the Affiliated Interests Rules (A.A.C. R14-2-801 et seq.), A.R.S. § 40-285, and A.R.S. §§ 40- 301 to -303, is denied.

IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

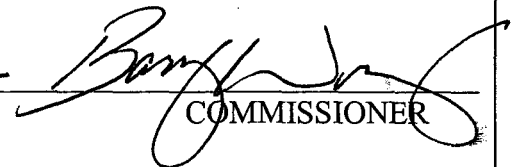
BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION


CHAIRMAN


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 20th day of October, 2006.


BRIAN C. McNEIL
Executive Director

DISSENT: _____

DISSENT: _____

EGJ:AFF:lhM/MAS

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DOCKET NO. T-03654A-06-0356

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